

Senate Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 139

SENATE BILL 1557

AN ACT

AMENDING SECTIONS 45-465, 45-566.01, 45-567, 45-567.01, 45-567.02, 45-568, 45-568.01, 45-568.02, 45-574 AND 45-575, ARIZONA REVISED STATUTES; RELATING TO GROUNDWATER MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-465, Arizona Revised Statutes, is amended to
3 read:

4 45-465. Irrigation grandfathered right; determination of acres
5 entitled to and amount; appurtenancy

6 A. In an active management area, a person who owns land which was
7 legally irrigated in whole or in part with groundwater at any time during the
8 five years preceding January 1, 1980 for initial active management areas or
9 the date of the notice of the initiation of designation procedures or the
10 call for the election for subsequent active management areas, which is
11 capable of being irrigated and which has not been retired from irrigation for
12 a non-irrigation use pursuant to section 45-463 or 45-469 has the right to
13 use groundwater for the irrigation of such land as determined pursuant to
14 subsections B and C of this section.

15 B. Except as provided in subsection C of this section, the director
16 shall compute the maximum amount of groundwater which may be used pursuant to
17 this section as follows:

18 1. Determine the farm units, as defined in section 45-402, within the
19 active management area.

20 2. Determine the irrigation water duty, as defined in section 45-402,
21 for each farm unit in an active management area, pursuant to sections 45-564
22 through 45-568.

23 3. Determine the water duty acres for each farm within the farm unit.
24 The water duty acres are the highest number of acres in the farm, taking land
25 rotation into account, which were legally irrigated during any one year in
26 the five years preceding January 1, 1980 for initial active management areas
27 or the date of the notice of the initiation of designation procedures or the
28 call for the election for subsequent active management areas.

29 4. Determine the irrigation acres for each farm within the farm unit.
30 The irrigation acres are the acres in the farm which were legally irrigated
31 at any time during the five years preceding January 1, 1980 for initial
32 active management areas or the date of the notice of the initiation of
33 designation procedures or the call for the election for subsequent active
34 management areas, which are capable of being irrigated and which have not
35 been retired from irrigation for a non-irrigation use pursuant to section
36 45-463 or 45-469.

37 5. Multiply the water duty acres for each farm within the farm unit by
38 the irrigation water duty for the farm unit and divide that amount by the
39 number of irrigation acres in the farm. The result shall be the maximum
40 amount of groundwater which may be used per year for the irrigation of each
41 irrigation acre in the farm. If the farm is located in an active management
42 area other than the Santa Cruz active management area and is irrigated solely
43 with groundwater, the amount of groundwater used by the farm for irrigation
44 shall be accounted for pursuant to section 45-467, subsection C. If a farm
45 is located in an active management area other than the Santa Cruz active

1 management area and is irrigated with a combination of surface water and
2 groundwater, the amount of groundwater used by the farm for irrigation shall
3 be accounted for pursuant to section 45-467, subsection D. If a farm is
4 located in the Santa Cruz active management area, the amount of water, other
5 than stored water, withdrawn from a well and used by the farm for irrigation
6 purposes shall be accounted for pursuant to section 45-467, subsection E
7 or F.

8 C. A person who owns land described in subsection A of this section
9 and whose water use on the land is regulated under a best management
10 practices program that is adopted by the director pursuant to section
11 45-566.02, subsection F, SECTION 45-567.02, SUBSECTION G OR SECTION
12 45-568.02, SUBSECTION G:

13 1. Has the right to use groundwater for an irrigation use on the
14 irrigation acres within that land as those acres are determined pursuant to
15 subsection B, paragraph 4 of this section.

16 2. Is exempt from the provisions of subsection B of this section with
17 respect to that land.

18 D. The right to use groundwater pursuant to this section for the
19 irrigation of an irrigation acre is an irrigation grandfathered right and is
20 appurtenant to that acre. An irrigation grandfathered right is owned by the
21 owner of the land to which it is appurtenant and may be leased for an
22 irrigation use with the land to which it is appurtenant.

23 E. A person who owns or leases irrigation acres may use the total
24 amount of groundwater allowed by the irrigation grandfathered right for such
25 acres for the irrigation of all or a portion of such acres.

26 F. If the irrigation water duty for the farm unit in which an
27 irrigation acre is located is reduced by the director pursuant to article 9
28 of this chapter, the amount of groundwater which may be used for the
29 irrigation of such acre pursuant to the irrigation grandfathered right under
30 subsection B of this section is reduced accordingly.

31 G. For purposes of this chapter, the amount of groundwater which may
32 be used or is used is the amount of groundwater withdrawn by the groundwater
33 user, measured at the point of withdrawal, and the amount of groundwater
34 received by the groundwater user from an irrigation district or other source.

35 Sec. 2. Section 45-566.01, Arizona Revised Statutes, is amended to
36 read:

37 45-566.01. Non-per capita conservation program for municipal
38 providers; third management period

39 A. In addition to the provisions of the management plan for the third
40 management period prescribed by section 45-566, subsection A, paragraph 2, NO
41 LATER THAN JANUARY 1, 2008, the director shall ~~include in the management~~
42 ~~plan a~~ MODIFY THE MANAGEMENT PLAN TO REPLACE THE non-per capita conservation
43 program for municipal providers ~~that requires~~ IN EFFECT ON THE EFFECTIVE DATE
44 OF THIS AMENDMENT TO THIS SECTION WITH A NON-PER CAPITA CONSERVATION PROGRAM
45 THAT IS CONSISTENT WITH THE GUIDELINES IN THIS AMENDMENT TO THIS SECTION.

1 EXCEPT AS PROVIDED IN SUBSECTIONS J, K, L AND M OF THIS SECTION, ALL
2 MUNICIPAL PROVIDERS SHALL COMPLY WITH THE NON-PER CAPITA CONSERVATION PROGRAM
3 BY THE DATE PRESCRIBED IN SUBSECTION I OF THIS SECTION. THE NON-PER CAPITA
4 CONSERVATION PROGRAM SHALL REQUIRE a municipal provider approved for
5 REGULATED UNDER the program to implement specific WATER conservation programs
6 within MEASURES IN its service area, including all of the following:

7 ~~1. Residential and nonresidential conservation programs for interior~~
8 ~~and exterior water use.~~

9 ~~2. 1. A public education program relating to water conservation.~~

10 ~~3. 2. A program to meter all service area connections, except~~
11 ~~connections to fire services, dwelling units in multifamily residential~~
12 ~~structures, mobile homes in mobile home parks with master meters and~~
13 ~~construction users.~~

14 3. ONE OR MORE ADDITIONAL CONSERVATION MEASURES SELECTED BY THE
15 PROVIDER FROM THE LIST OF CONSERVATION MEASURES ADOPTED BY THE DIRECTOR
16 PURSUANT TO SUBSECTION B OF THIS SECTION, SUBJECT TO APPROVAL BY THE DIRECTOR
17 PURSUANT TO SUBSECTION G OR H OF THIS SECTION. THE PROGRAM MAY PRESCRIBE THE
18 NUMBER OF ADDITIONAL CONSERVATION MEASURES THAT A PROVIDER MUST IMPLEMENT
19 UNDER THIS PARAGRAPH BASED ON THE NUMBER OF SERVICE CONNECTIONS IN THE
20 PROVIDER'S SERVICE AREA.

21 ~~B. In a non-per capita conservation program established under this~~
22 ~~section, the director shall establish a standard incidental recharge factor~~
23 ~~for all municipal providers that apply for the program, except for municipal~~
24 ~~providers that are members of a groundwater replenishment district~~
25 ~~established under title 48, chapter 27. A municipal provider that applies~~
26 ~~for the non-per capita conservation program may request in its application~~
27 ~~that the director establish an incidental recharge factor for the municipal~~
28 ~~provider that is different than the standard incidental recharge factor~~
29 ~~established in the program. The director may establish a different~~
30 ~~incidental recharge factor for the municipal provider if the municipal~~
31 ~~provider demonstrates to the satisfaction of the director that the ratio of~~
32 ~~the average annual amount of incidental recharge expected to be attributable~~
33 ~~to the municipal provider during the management period to the average annual~~
34 ~~amount of water expected to be withdrawn, diverted or received for delivery~~
35 ~~by the municipal provider for use within its service area during the~~
36 ~~management period is different than the standard incidental recharge factor.~~

37 ~~C. A municipal provider that was approved for a non-per capita~~
38 ~~conservation program established pursuant to section 45-565.01 and that~~
39 ~~applies for the non-per capita conservation program established under this~~
40 ~~section within ninety days from the date of the first notice of the~~
41 ~~conservation requirements prescribed pursuant to section 45-566, subsection~~
42 ~~A, paragraph 2 remains subject to the program established under section~~
43 ~~45-565.01 until the director approves or denies the application. If the~~
44 ~~director denies the application or if the provider fails to apply within~~
45 ~~ninety days from the date of the first notice of the conservation~~

1 ~~requirements prescribed pursuant to section 45-566, subsection A, paragraph~~
2 ~~2, the municipal provider shall comply with the per capita conservation~~
3 ~~requirements prescribed pursuant to section 45-566, subsection A, paragraph~~
4 ~~2, until the director approves an application filed by the provider for the~~
5 ~~non-per capita conservation program established pursuant to this section.~~

6 ~~D. A municipal provider may apply for a non-per capita conservation~~
7 ~~program established under this section if any of the following applies:~~

8 ~~1. The municipal provider is a member of a groundwater replenishment~~
9 ~~district established under title 48, chapter 27.~~

10 ~~2. The service area of the municipal provider has qualified as a~~
11 ~~member service area under title 48, chapter 22, or as a water district member~~
12 ~~service area under title 48, chapter 28, and the conditions established under~~
13 ~~section 45-576.01, subsection B, paragraphs 2 and 3 are met by the~~
14 ~~conservation district or the water district, as applicable, for the active~~
15 ~~management area in which the service area is located.~~

16 ~~3. The municipal provider has developed a plan to both:~~

17 ~~(a) Reduce the proportion of mined groundwater supplied by it for use~~
18 ~~within its service area such that the result computed by dividing the volume~~
19 ~~of mined groundwater supplied by the provider for use within its service area~~
20 ~~in a year by the volume of all water supplied by the provider for use within~~
21 ~~its service area in that year does not exceed:~~

22 ~~(i) Two thirds for 2000.~~

23 ~~(ii) Three fifths for 2001.~~

24 ~~(iii) Eight fifteenths for 2002.~~

25 ~~(iv) Seven fifteenths for 2003.~~

26 ~~(v) Two fifths for 2004.~~

27 ~~(vi) One third for 2005.~~

28 ~~(vii) Four fifteenths for 2006.~~

29 ~~(viii) One fifth for 2007.~~

30 ~~(ix) Two fifteenths for 2008.~~

31 ~~(x) One fifteenth for 2009.~~

32 ~~(b) Deliver no mined groundwater for use within its service area after~~
33 ~~January 1, 2010.~~

34 ~~4. The municipal provider is designated as having an assured water~~
35 ~~supply under rules adopted by the director pursuant to section 45-576.~~

36 ~~E. The director shall prescribe and furnish an application form for a~~
37 ~~non-per capita conservation program established under this section that~~
38 ~~includes the following:~~

39 ~~1. If the municipal provider requests an incidental recharge factor~~
40 ~~different than the standard incidental recharge factor established by the~~
41 ~~director pursuant to subsection B of this section:~~

42 ~~(a) A copy of a hydrological study that demonstrates the amount of~~
43 ~~water withdrawn, diverted or received for delivery by the municipal provider~~
44 ~~for use within its service area during each of the preceding five years and~~

1 ~~the amount of incidental recharge that was attributable to the municipal~~
2 ~~provider during each of those years.~~

3 ~~(b) A copy of a hydrological study that projects the average annual~~
4 ~~amount of water that will be withdrawn, diverted or received for delivery by~~
5 ~~the municipal provider for use within its service area during the management~~
6 ~~period and the average annual amount of incidental recharge that will be~~
7 ~~attributable to the municipal provider during the management period.~~

8 ~~2. If the municipal provider is applying for the program under~~
9 ~~subsection D, paragraph 3 of this section, a copy of the plan described in~~
10 ~~that paragraph.~~

11 ~~3. A description of the conservation programs currently being~~
12 ~~implemented by the municipal provider, and any conservation programs that the~~
13 ~~municipal provider intends to implement if it is approved for the non per~~
14 ~~capita conservation program, including a time schedule for implementing the~~
15 ~~programs.~~

16 ~~4. Any other information that the director may require.~~

17 B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION
18 PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL
19 PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE
20 REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION A, PARAGRAPH 3 OF THIS SECTION.

21 C. IN ADDITION TO THE REQUIREMENTS PRESCRIBED IN SUBSECTION A OF THIS
22 SECTION, A MUNICIPAL PROVIDER REGULATED UNDER THE NON PER-CAPITA CONSERVATION
23 PROGRAM SHALL:

24 1. INCLUDE IN ITS ANNUAL REPORTS FILED PURSUANT TO SECTION 45-632 A
25 COPY OF THE PROVIDER'S CURRENT WATER RATE STRUCTURE UNLESS NO CHANGES HAVE
26 BEEN MADE TO THE RATE STRUCTURE SINCE IT WAS LAST SUBMITTED TO THE DIRECTOR.
27 A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM
28 IS ENCOURAGED TO ADOPT A WATER RATE STRUCTURE THAT PROMOTES EFFICIENT USE OF
29 WATER, SUBJECT TO APPROVAL BY THE CORPORATION COMMISSION IF THE PROVIDER IS A
30 PUBLIC SERVICE CORPORATION.

31 2. FOR AT LEAST FIVE YEARS AFTER A YEAR IN WHICH THE MUNICIPAL
32 PROVIDER IS REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, KEEP AND
33 MAINTAIN ACCURATE RECORDS VERIFYING THAT THE MUNICIPAL PROVIDER IMPLEMENTED
34 THE CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM
35 DURING THAT YEAR.

36 ~~F. D. The director shall approve a municipal provider's application~~
37 ~~for a non per capita conservation program established under this section only~~
38 ~~if the following conditions are satisfied:~~

39 ~~1. The municipal provider agrees in writing to implement specific~~
40 ~~conservation programs that will result in achieving DESIGN THE NON-PER CAPITA~~
41 ~~CONSERVATION PROGRAM TO ACHIEVE water use efficiency in the municipal~~
42 ~~provider's service area AREAS OF MUNICIPAL PROVIDERS REGULATED UNDER THE~~
43 ~~PROGRAM equivalent to the water use efficiency that was assumed by the~~
44 ~~director in establishing the municipal provider's per capita conservation~~

1 requirements pursuant to section 45-566, subsection A, paragraph 2, including
2 the programs described in subsection A of this section.

3 ~~2. If the municipal provider is applying for the program under~~
4 ~~subsection D, paragraph 3 of this section, the municipal provider has~~
5 ~~demonstrated to the satisfaction of the director that it will reduce the~~
6 ~~proportion of mined groundwater supplied by it for use within its service~~
7 ~~area to the proportions described in subsection D, paragraph 3, subdivision~~
8 ~~(a) of this section, and that it will not deliver mined groundwater for use~~
9 ~~within its service area after January 1, 2010.~~

10 E. WITHIN THIRTY DAYS AFTER THE MANAGEMENT PLAN FOR THE THIRD
11 MANAGEMENT PERIOD IS MODIFIED TO INCLUDE THE NON-PER CAPITA CONSERVATION
12 PROGRAM REQUIRED BY THIS AMENDMENT TO THIS SECTION, THE DIRECTOR SHALL GIVE
13 WRITTEN NOTICE OF THE PROGRAM TO ALL MUNICIPAL PROVIDERS.

14 F. EXCEPT AS PROVIDED IN SUBSECTIONS J, K, L AND M OF THIS SECTION:

15 1. NO LATER THAN JULY 1, 2009, A MUNICIPAL PROVIDER NOTIFIED OF THE
16 NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SUBSECTION E OF THIS SECTION
17 SHALL SUBMIT TO THE DIRECTOR, ON A FORM PRESCRIBED BY THE DIRECTOR, A
18 PROVIDER PROFILE THAT CONTAINS THE FOLLOWING INFORMATION:

19 (a) A DESCRIPTION OF THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA
20 CHARACTERISTICS AND WATER USE PATTERNS.

21 (b) A DESCRIPTION OF THE CONSERVATION MEASURES THE MUNICIPAL PROVIDER
22 IS CURRENTLY IMPLEMENTING AND ANY ADDITIONAL CONSERVATION MEASURES THAT THE
23 PROVIDER INTENDS TO IMPLEMENT TO COMPLY WITH THE NON-PER CAPITA CONSERVATION
24 PROGRAM.

25 (c) AN EXPLANATION OF HOW EACH CONSERVATION MEASURE DESCRIBED IN THE
26 PROVIDER PROFILE IS RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE
27 AREA CHARACTERISTICS OR WATER USE PATTERNS.

28 2. NO LATER THAN THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A
29 MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM
30 PURSUANT TO SECTION 45-571.01, SUBSECTION B SHALL SUBMIT TO THE DIRECTOR, ON
31 A FORM PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT INCLUDES THE
32 INFORMATION DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION.

33 G. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S PROVIDER
34 PROFILE UNDER SUBSECTION F OF THIS SECTION, THE DIRECTOR SHALL APPROVE OR
35 DISAPPROVE THE PROVIDER PROFILE AND SEND WRITTEN NOTICE OF THE DECISION TO
36 THE MUNICIPAL PROVIDER. THE DIRECTOR SHALL APPROVE THE PROVIDER PROFILE IF
37 THE DIRECTOR DETERMINES THAT THE PROFILE CONTAINS INFORMATION DEMONSTRATING
38 THAT THE MUNICIPAL PROVIDER WILL IMPLEMENT AT LEAST THE MINIMUM NUMBER OF
39 CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM AND
40 THAT THE CONSERVATION MEASURES ARE REASONABLY RELEVANT TO THE MUNICIPAL
41 PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS OR WATER USE PATTERNS. IF
42 THE DIRECTOR DISAPPROVES THE PROVIDER PROFILE, THE DIRECTOR SHALL INCLUDE
43 WITH THE WRITTEN NOTICE OF THE DECISION THE REASONS FOR THE DISAPPROVAL. A
44 DECISION OF THE DIRECTOR DISAPPROVING A PROVIDER PROFILE IS AN APPEALABLE
45 AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. IF THE DIRECTOR

1 FAILS TO SEND THE MUNICIPAL PROVIDER WRITTEN NOTICE APPROVING OR DISAPPROVING
2 THE MUNICIPAL PROVIDER'S PROVIDER PROFILE WITHIN NINETY DAYS AFTER RECEIVING
3 THE PROVIDER PROFILE, THE PROVIDER PROFILE SHALL BE DEEMED APPROVED.

4 H. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER PROFILE
5 PURSUANT TO SUBSECTION G OF THIS SECTION, WITHIN NINETY DAYS AFTER THE DATE
6 OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER PROFILE, OR WITHIN
7 NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF THE MUNICIPAL PROVIDER
8 FILES A TIMELY NOTICE OF APPEAL OF THE DECISION PURSUANT TO TITLE 41, CHAPTER
9 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL REVISE THE PROVIDER PROFILE TO
10 CORRECT THE DEFICIENCIES IDENTIFIED BY THE DIRECTOR IN THE WRITTEN NOTICE AND
11 SUBMIT THE REVISED PROVIDER PROFILE TO THE DIRECTOR. WITHIN NINETY DAYS
12 AFTER RECEIVING A MUNICIPAL PROVIDER'S REVISED PROVIDER PROFILE PURSUANT TO
13 THIS SUBSECTION, THE DIRECTOR SHALL APPROVE OR DISAPPROVE THE REVISED
14 PROVIDER PROFILE PURSUANT TO SUBSECTION G OF THIS SECTION. IF THE DIRECTOR
15 DISAPPROVES THE REVISED PROVIDER PROFILE:

16 1. THE DECISION IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41,
17 CHAPTER 6, ARTICLE 10.

18 2. THE MUNICIPAL PROVIDER IS IN VIOLATION OF THIS SECTION BEGINNING ON
19 THE DATE THE DIRECTOR'S DECISION IS FINAL UNTIL THE MUNICIPAL PROVIDER
20 SUBMITS A PROVIDER PROFILE THAT IS APPROVED BY THE DIRECTOR, EXCEPT THAT THE
21 PROVIDER SHALL NOT BE IN VIOLATION BEFORE JANUARY 1, 2010.

22 I. EXCEPT AS PROVIDED IN SUBSECTIONS J, K, L AND M OF THIS SECTION:

23 1. A MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION
24 PROGRAM PURSUANT TO SUBSECTION E OF THIS SECTION SHALL BE REGULATED UNDER THE
25 PROGRAM BEGINNING ON THE DATE THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S
26 PROVIDER PROFILE PURSUANT TO SUBSECTION G OR H OF THIS SECTION, BUT NOT
27 EARLIER THAN JANUARY 1, 2010 UNLESS THE MUNICIPAL PROVIDER AGREES TO BE
28 REGULATED UNDER THE PROGRAM BEFORE THAT DATE AND THE DIRECTOR HAS APPROVED
29 THE MUNICIPAL PROVIDER'S PROVIDER PROFILE. A MUNICIPAL PROVIDER REGULATED
30 UNDER THE NON-PER CAPITA CONSERVATION PROGRAM SHALL COMPLY WITH THE PROGRAM
31 BEGINNING ON THE DATE THE PROVIDER IS FIRST REGULATED UNDER THE PROGRAM UNTIL
32 THE COMPLIANCE DATE FOR THE APPLICABLE CONSERVATION REQUIREMENTS ESTABLISHED
33 IN THE MANAGEMENT PLAN FOR THE FOURTH MANAGEMENT PERIOD.

34 2. A MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION
35 PROGRAM PURSUANT TO SECTION 45-571.01, SUBSECTION B SHALL BE REGULATED UNDER
36 THE NON-PER CAPITA CONSERVATION PROGRAM BEGINNING ON THE DATE THE DIRECTOR
37 APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION G
38 OR H OF THIS SECTION, OR SUCH LATER DATE AS DETERMINED BY THE DIRECTOR, AND
39 SHALL COMPLY WITH THE PROGRAM BEGINNING ON THAT DATE UNTIL THE COMPLIANCE
40 DATE FOR THE APPLICABLE CONSERVATION REQUIREMENTS ESTABLISHED IN THE
41 MANAGEMENT PLAN FOR THE FOURTH MANAGEMENT PERIOD.

42 J. EXCEPT AS PROVIDED IN SUBSECTION K OF THIS SECTION, A MUNICIPAL
43 PROVIDER DESIGNATED AS HAVING AN ASSURED WATER SUPPLY PURSUANT TO SECTION
44 45-576 SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM
45 ESTABLISHED UNDER THIS SECTION, BUT INSTEAD SHALL BE REGULATED UNDER THE PER

1 CAPITA CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR PURSUANT TO SECTION
2 45-566, SUBSECTION A, PARAGRAPH 2, UNLESS BOTH OF THE FOLLOWING APPLY:

3 1. THE MUNICIPAL PROVIDER NOTIFIES THE DIRECTOR IN WRITING THAT IT
4 ELECTS TO BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM AND
5 INCLUDES WITH THE NOTICE A PROVIDER PROFILE THAT CONTAINS THE INFORMATION
6 PRESCRIBED BY SUBSECTION F, PARAGRAPH 1 OF THIS SECTION.

7 2. THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE
8 PURSUANT TO SUBSECTION G OF THIS SECTION OR A REVISED PROVIDER PROFILE
9 PURSUANT TO SUBSECTION H OF THIS SECTION. THE MUNICIPAL PROVIDER SHALL BE
10 REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM BEGINNING ON THE DATE
11 THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE OR REVISED
12 PROVIDER PROFILE.

13 K. IF A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER
14 SUPPLY PURSUANT TO SECTION 45-576 IS REGULATED UNDER A MUNICIPAL CONSERVATION
15 PROGRAM OTHER THAN THE PER CAPITA CONSERVATION PROGRAM ESTABLISHED BY THE
16 DIRECTOR PURSUANT TO SECTION 45-566, SUBSECTION A, PARAGRAPH 2 ON THE DATE
17 THE PROVIDER RECEIVES WRITTEN NOTICE PURSUANT TO SUBSECTION E OF THIS SECTION
18 AND THE PROVIDER IS IN COMPLIANCE WITH THAT PROGRAM AS OF THAT DATE:

19 1. THE MUNICIPAL PROVIDER SHALL CONTINUE TO COMPLY WITH THE
20 REQUIREMENTS OF THAT PROGRAM UNTIL THE COMPLIANCE DATE FOR THE APPLICABLE
21 CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE FOURTH
22 MANAGEMENT PERIOD.

23 2. THE PROVIDER MAY ELECT TO BE REGULATED UNDER THE PER CAPITA
24 CONSERVATION PROGRAM ADOPTED PURSUANT TO SECTION 45-566, SUBSECTION A,
25 PARAGRAPH 2 BY GIVING WRITTEN NOTICE OF THE ELECTION TO THE DIRECTOR. AFTER
26 GIVING SUCH WRITTEN NOTICE, THE PROVIDER SHALL COMPLY WITH THE PER CAPITA
27 CONSERVATION REQUIREMENTS PRESCRIBED BY THE DIRECTOR BEGINNING ON A DATE
28 SPECIFIED BY THE DIRECTOR.

29 L. A LARGE UNTREATED WATER PROVIDER SHALL NOT BE REGULATED UNDER THE
30 NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF
31 UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH THE
32 CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED PURSUANT TO SECTION
33 45-566, SUBSECTION A, PARAGRAPH 3 WITH RESPECT TO ITS DELIVERIES OF UNTREATED
34 WATER.

35 M. A SMALL MUNICIPAL PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER
36 CAPITA CONSERVATION PROGRAM ESTABLISHED UNDER THIS SECTION, BUT INSTEAD SHALL
37 COMPLY WITH THE CONSERVATION REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL
38 PROVIDERS PURSUANT TO SECTION 45-566, SUBSECTION A, PARAGRAPH 4.

39 ~~G.~~ N. A municipal provider that is ~~approved for a~~ REGULATED UNDER THE
40 non-per capita conservation program established under this section shall
41 comply with any individual user requirements prescribed pursuant to section
42 45-566, subsection A, paragraph 2, except as provided in section 45-571.02.

43 ~~H. The director shall include in a non-per capita conservation program~~
44 ~~established under this section.~~

1 ~~1. A requirement that a municipal provider that applied for the~~
2 ~~program under subsection D, paragraph 3 of this section shall reduce the~~
3 ~~proportion of mined groundwater supplied by it for use within its service~~
4 ~~area to the proportions described in subsection D, paragraph 3, subdivision~~
5 ~~(a) of this section and shall not deliver mined groundwater for use within~~
6 ~~its service area after January 1, 2010. The director may excuse a municipal~~
7 ~~provider's failure to comply with the requirement during any year if the~~
8 ~~municipal provider demonstrates to the satisfaction of the director that the~~
9 ~~municipal provider's failure to comply with the requirement was due to~~
10 ~~drought conditions or the failure of a surface water distribution system.~~

11 ~~2. A requirement that a municipal provider that applied for the~~
12 ~~program under subsection D, paragraph 4 of this section shall not supply~~
13 ~~groundwater for use within its service area in an amount that exceeds the~~
14 ~~amount of groundwater that the municipal provider may supply for use within~~
15 ~~its service area consistent with rules adopted by the director pursuant to~~
16 ~~section 45-576.~~

17 ~~I. 0. Except as provided in subsection C of this section, a municipal~~
18 ~~provider that applies for a non-per capita conservation program under this~~
19 ~~section shall comply with the per capita conservation requirements~~
20 ~~established under section 45-566, subsection A, paragraph 2 until the~~
21 ~~director approves the application. If the municipal provider's application~~
22 ~~for the non-per capita conservation program is approved by the director, the~~
23 ~~provider A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION~~
24 ~~PROGRAM ESTABLISHED UNDER THIS SECTION is exempt from the per capita~~
25 ~~conservation requirements prescribed under section 45-566, subsection A,~~
26 ~~paragraph 2.~~

27 ~~P. THE DIRECTOR SHALL PREPARE A GUIDANCE DOCUMENT TO ASSIST MUNICIPAL~~
28 ~~PROVIDERS ENTERING INTO THE NON-PER CAPITA CONSERVATION PROGRAM. THE~~
29 ~~GUIDANCE DOCUMENT SHALL INFORM MUNICIPAL PROVIDERS OF THE REQUIREMENTS OF THE~~
30 ~~PROGRAM AS ADOPTED IN THE MANAGEMENT PLAN AND THE MANNER IN WHICH THE~~
31 ~~DIRECTOR WILL IMPLEMENT THE PROGRAM. THE DIRECTOR SHALL COOPERATE WITH~~
32 ~~MUNICIPAL PROVIDERS IN DEVELOPING THE GUIDANCE DOCUMENT.~~

33 ~~Sec. 3. Section 45-567, Arizona Revised Statutes, is amended to read:~~

34 ~~45-567. Management plan for fourth management period;~~
35 ~~guidelines~~

36 ~~A. For the fourth management period, 2010 to 2020, the director shall~~
37 ~~promulgate a management plan for each initial active management area not~~
38 ~~later than January 1, 2008. The director:~~

39 ~~1. Except as provided in section 45-563.02, subsection B, shall~~
40 ~~include in each plan an irrigation water duty or intermediate water duties.~~
41 ~~These duties shall be calculated in the manner provided in section 45-566,~~
42 ~~subsection A, paragraph 1 and shall be subject to an exemption under~~
43 ~~subsection E of this section. In setting the irrigation water duty or~~
44 ~~intermediate water duties for the fourth management period, the director may~~
45 ~~adjust the highest twenty-five per cent of the final irrigation water duties~~

1 established within an area of similar farming conditions pursuant to section
2 45-566 by reducing each water duty in an amount up to ten per cent, except
3 that, in making the adjustment, no water duty may be reduced to an amount
4 less than the greater of the following:

5 (a) The highest water duty within the lowest seventy-five per cent of
6 the water duties computed within the area of similar farming conditions for
7 the fourth management period.

8 (b) A water duty computed for the farm unit under this paragraph using
9 an irrigation efficiency of eighty per cent.

10 2. May include in each plan, if feasible, additional conservation
11 requirements for non-irrigation uses and intermediate conservation
12 requirements, which shall apply subject to ~~the provisions of~~ section
13 45-567.01.

14 3. May include in each plan, if feasible, conservation or rate of use
15 requirements for deliveries of untreated water by large untreated water
16 providers based on the use of the latest commercially available conservation
17 technology consistent with reasonable economic return.

18 4. May include in each plan, except the plan for the Santa Cruz active
19 management area, if feasible, additional economically reasonable conservation
20 requirements for the distribution of groundwater by cities, towns, private
21 water companies and irrigation districts within their service areas. In the
22 plan for the Santa Cruz active management area, the director may include, if
23 feasible, additional economically reasonable conservation requirements for
24 the distribution of water, other than stored water, withdrawn from wells, for
25 cities, towns, private water companies and irrigation districts within their
26 service areas.

27 5. May include in each plan, if feasible, a program for additional
28 augmentation of the water supply of the active management area, including
29 incentives for artificial groundwater recharge.

30 6. May include in each plan, if feasible, in cooperation with the
31 department of environmental quality, an assessment of groundwater quality in
32 the active management area and any proposed program for groundwater quality
33 protection. Any such program shall be submitted to the legislature for any
34 necessary enabling legislation or coordination with existing programs of the
35 department of environmental quality.

36 7. May include in each plan, if feasible, a program for conservation
37 assistance to water users within the active management area.

38 8. May include in each plan, if feasible, a program for purchase and
39 retirement of grandfathered rights by the department.

40 9. Shall include in the plan for the Santa Cruz active management area
41 criteria for the location of new wells and replacement wells in new locations
42 consistent with the management goal of the active management area.

43 10. Shall include in the plan for the Santa Cruz active management area
44 an evaluation of the potential impact of the plan on the Tucson active
45 management area.

1 11. Shall include in the plans for the Tucson, Phoenix and Pinal active
2 management areas recommendations to the Arizona water banking authority
3 regarding all of the following:

4 (a) Whether additional water storage in the active management area
5 would help to achieve the management goal for the active management area.

6 (b) Where additional water storage in the active management area would
7 be most useful to achieve the management goal for the active management area.

8 (c) Whether extinguishment of long-term storage credits accrued or to
9 be accrued by the Arizona water banking authority would help to achieve the
10 management goal for the active management area.

11 B. In the plans adopted under subsection A of this section, the
12 director shall establish the historic annual net natural recharge for any
13 groundwater replenishment district in the active management area, computed by
14 determining the net natural recharge, as defined by IN section 48-4401, for
15 the groundwater basin beneath the district during calendar years 1977 through
16 2006 and dividing the result by thirty.

17 C. Within thirty days after the management plan for the fourth
18 management period is adopted, the director shall give written notice in the
19 manner and to the persons prescribed in section 45-565, subsection B AND
20 SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM
21 ESTABLISHED PURSUANT TO SECTION 45-567.01 TO ALL MUNICIPAL PROVIDERS. Two
22 years before the compliance date specified in the management plan for any
23 irrigation water duty, intermediate water duty, conservation requirement or
24 intermediate conservation requirement, the director shall give additional
25 written notice by first class mail to the last known addresses of the persons
26 prescribed in section 45-565, subsection B AND THIS SUBSECTION.

27 D. Except for a person who obtains a variance under section 45-574 or
28 who is exempt from irrigation water duties under section 45-563.02,
29 subsection A, all persons notified pursuant to subsection C of this section
30 shall comply with the applicable irrigation water duty or conservation
31 requirements for the fourth management period not later than January 1, 2020
32 and shall remain in compliance until the compliance date for any applicable
33 irrigation water duty or conservation requirements established in the
34 management plan for the fifth management period. If intermediate water
35 duties or intermediate conservation requirements have been established, a
36 person to whom those water duties or conservation requirements apply shall
37 comply with the intermediate water duties or intermediate conservation
38 requirements not later than the compliance date specified in the management
39 plan, unless the person obtains a variance pursuant to section 45-574 or is
40 exempt from intermediate water duties under section 45-563.02, subsection A.
41 A person who obtains a variance under section 45-574 shall comply with the
42 applicable irrigation water duty or conservation requirements by the date
43 specified in the variance and shall remain in compliance until the subsequent
44 compliance date for any applicable irrigation water duty or conservation
45 requirements established in the management plan for the fourth management

1 period or, if that management plan does not establish any applicable
2 subsequent compliance date, until the applicable compliance date established
3 in the management plan for the fifth management period.

4 E. A person who is entitled to use groundwater pursuant to an
5 irrigation grandfathered right may apply to the director at any time during
6 the fourth management period for an exemption from the irrigation water
7 duties established under subsection A, paragraph 1 of this section. The
8 director shall grant the exemption if the person demonstrates to the
9 director's satisfaction that granting the exemption is consistent with
10 achieving the management goal of the active management area and that one of
11 the following applies:

12 1. Withdrawal of groundwater pursuant to the irrigation grandfathered
13 right during the management period will intercept groundwater that would
14 otherwise flow out of and be lost to the active management area within the
15 next fifteen years without entering another active management area.

16 2. Withdrawal of groundwater pursuant to the irrigation grandfathered
17 right during the management period will prevent encroachment of a rising
18 depth to groundwater level that will cause waterlogging problems within the
19 next fifteen years.

20 Sec. 4. Section 45-567.01, Arizona Revised Statutes, is amended to
21 read:

22 45-567.01. Non-per capita conservation program for municipal
23 providers; fourth management period

24 A. In addition to the provisions of the management plan for the fourth
25 management period prescribed by section 45-567, subsection A, the director
26 shall include in the management plan a non-per capita conservation program
27 for municipal providers. ~~that requires~~ THE PROGRAM SHALL REQUIRE a municipal
28 provider approved for REGULATED UNDER the program to implement specific WATER
29 conservation programs within MEASURES IN its service area, including all of
30 the following:

31 ~~1. Residential and nonresidential conservation programs for interior~~
32 ~~and exterior water use.~~

33 ~~2.~~ 1. A public education program relating to water conservation.

34 ~~3.~~ 2. A program to meter all service area connections, except
35 connections to fire services, dwelling units in multifamily residential
36 structures, mobile homes in mobile home parks with master meters and
37 construction users.

38 3. ONE OR MORE ADDITIONAL CONSERVATION MEASURES SELECTED BY THE
39 PROVIDER FROM THE LIST OF CONSERVATION MEASURES ADOPTED BY THE DIRECTOR
40 PURSUANT TO SUBSECTION B OF THIS SECTION, SUBJECT TO APPROVAL BY THE DIRECTOR
41 PURSUANT TO SUBSECTION F OR G OF THIS SECTION. THE PROGRAM MAY PRESCRIBE THE
42 NUMBER OF ADDITIONAL CONSERVATION MEASURES THAT A PROVIDER MUST IMPLEMENT
43 UNDER THIS PARAGRAPH BASED ON THE NUMBER OF SERVICE CONNECTIONS IN THE
44 PROVIDER'S SERVICE AREA.

1 ~~B. In a non-per capita conservation program established under this~~
2 ~~section, the director shall establish a standard incidental recharge factor~~
3 ~~for all municipal providers that apply for the program, except for municipal~~
4 ~~providers that are members of a groundwater replenishment district~~
5 ~~established under title 48, chapter 27. A municipal provider that applies~~
6 ~~for the non-per capita conservation program may request in its application~~
7 ~~that the director establish an incidental recharge factor for the municipal~~
8 ~~provider that is different than the standard incidental recharge factor~~
9 ~~established in the program. The director may establish a different~~
10 ~~incidental recharge factor for the municipal provider if the municipal~~
11 ~~provider demonstrates to the satisfaction of the director that the ratio of~~
12 ~~the average annual amount of incidental recharge expected to be attributable~~
13 ~~to the municipal provider during the management period to the average annual~~
14 ~~amount of water expected to be withdrawn, diverted or received for delivery~~
15 ~~by the municipal provider for use within its service area during the~~
16 ~~management period is different than the standard incidental recharge factor.~~

17 ~~C. A municipal provider that was approved for a non per capita~~
18 ~~conservation program established pursuant to section 45-566.01 and that~~
19 ~~applies for the non per capita conservation program established under this~~
20 ~~section within ninety days from the date of the first notice of the~~
21 ~~conservation requirements prescribed pursuant to section 45-567, subsection~~
22 ~~A, paragraph 2 remains subject to the program established under section~~
23 ~~45-566.01 until the director approves or denies the application. If the~~
24 ~~director denies the application, or if the provider fails to apply for the~~
25 ~~program within ninety days from the date of the first notice of the~~
26 ~~conservation requirements prescribed pursuant to section 45-567, subsection~~
27 ~~A, paragraph 2, the municipal provider shall comply with the per capita~~
28 ~~conservation requirements prescribed pursuant to section 45-567, subsection~~
29 ~~A, paragraph 2, until the director approves an application filed by the~~
30 ~~provider for the non-per capita conservation program established pursuant to~~
31 ~~this section.~~

32 ~~D. A municipal provider may apply for a non-per capita conservation~~
33 ~~program established under this section if any of the following applies:~~

34 ~~1. The municipal provider is a member of a groundwater replenishment~~
35 ~~district established under title 48, chapter 27.~~

36 ~~2. The service area of the municipal provider has qualified as a~~
37 ~~member service area under title 48, chapter 22, or as a water district member~~
38 ~~service area under title 48, chapter 28, and the conditions established under~~
39 ~~section 45-576.01, subsection B, paragraphs 2 and 3 are met by the~~
40 ~~conservation district or the water district, as applicable, for the active~~
41 ~~management area in which the service area is located.~~

42 ~~3. The municipal provider has developed a plan to deliver no mined~~
43 ~~groundwater for use within its service area after January 1, 2010.~~

44 ~~4. The municipal provider is designated as having an assured water~~
45 ~~supply under rules adopted by the director pursuant to section 45-576.~~

1 ~~E. The director shall prescribe and furnish an application form for a~~
2 ~~non-per capita conservation program established under this section that~~
3 ~~includes the following:~~

4 ~~1. If the municipal provider requests an incidental recharge factor~~
5 ~~different than the standard incidental recharge factor established by the~~
6 ~~director pursuant to subsection B of this section:~~

7 ~~(a) A copy of a hydrological study that demonstrates the amount of~~
8 ~~water withdrawn, diverted or received for delivery by the municipal provider~~
9 ~~for use within its service area during each of the preceding five years and~~
10 ~~the amount of incidental recharge that was attributable to the municipal~~
11 ~~provider during each of those years.~~

12 ~~(b) A copy of a hydrological study that projects the average annual~~
13 ~~amount of water that will be withdrawn, diverted or received for delivery by~~
14 ~~the municipal provider for use within its service area during the management~~
15 ~~period and the average annual amount of incidental recharge that will be~~
16 ~~attributable to the municipal provider during the management period.~~

17 ~~2. If the municipal provider is applying for the program under~~
18 ~~subsection D, paragraph 3 of this section a copy of the plan described in~~
19 ~~that paragraph.~~

20 ~~3. A description of the conservation programs currently being~~
21 ~~implemented by the municipal provider, and any conservation programs that the~~
22 ~~municipal provider intends to implement if it is approved for the non-per~~
23 ~~capita conservation program, including a time schedule for implementing the~~
24 ~~programs.~~

25 ~~4. Any other information that the director may require.~~

26 B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION
27 PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL
28 PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE
29 REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION A, PARAGRAPH 3 OF THIS SECTION.

30 C. IN ADDITION TO THE REQUIREMENTS PRESCRIBED IN SUBSECTION A OF THIS
31 SECTION, A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION
32 PROGRAM SHALL:

33 1. INCLUDE IN ITS ANNUAL REPORTS FILED PURSUANT TO SECTION 45-632 A
34 COPY OF THE PROVIDER'S CURRENT WATER RATE STRUCTURE UNLESS NO CHANGES HAVE
35 BEEN MADE TO THE RATE STRUCTURE SINCE IT WAS LAST SUBMITTED TO THE DIRECTOR.
36 A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM
37 IS ENCOURAGED TO ADOPT A WATER RATE STRUCTURE THAT PROMOTES EFFICIENT USE OF
38 WATER, SUBJECT TO APPROVAL BY THE CORPORATION COMMISSION IF THE PROVIDER IS A
39 PUBLIC SERVICE CORPORATION.

40 2. FOR AT LEAST FIVE YEARS AFTER A YEAR IN WHICH THE MUNICIPAL
41 PROVIDER IS REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, KEEP AND
42 MAINTAIN ACCURATE RECORDS VERIFYING THAT THE MUNICIPAL PROVIDER IMPLEMENTED
43 THE CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM
44 DURING THAT YEAR.

1 ~~F. D. The director shall approve a municipal provider's application~~
2 ~~for a non-per capita conservation program established under this section only~~
3 ~~if the following conditions are satisfied:~~

4 ~~1. The municipal provider agrees in writing to implement specific~~
5 ~~conservation programs that will result in achieving DESIGN THE NON-PER CAPITA~~
6 ~~CONSERVATION PROGRAM TO ACHIEVE water use efficiency in the municipal~~
7 ~~provider's service area AREAS OF MUNICIPAL PROVIDERS REGULATED UNDER THE~~
8 ~~PROGRAM equivalent to the water use efficiency that was assumed by the~~
9 ~~director in establishing the municipal provider's per capita conservation~~
10 ~~requirements pursuant to section 45-567, subsection A, paragraph 2, including~~
11 ~~the programs described in subsection A of this section.~~

12 ~~2. If the municipal provider applied for the program under subsection~~
13 ~~D, paragraph 3 of this section, the municipal provider has demonstrated to~~
14 ~~the satisfaction of the director that it will not deliver mined groundwater~~
15 ~~for use within its service area after January 1, 2010.~~

16 E. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, ON OR
17 BEFORE THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A MUNICIPAL PROVIDER
18 NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION
19 45-567, SUBSECTION C OR SECTION 45-571.01, SUBSECTION B SHALL SUBMIT TO THE
20 DIRECTOR, ON A FORM PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT
21 CONTAINS THE FOLLOWING INFORMATION:

22 1. A DESCRIPTION OF THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA
23 CHARACTERISTICS AND WATER USE PATTERNS.

24 2. A DESCRIPTION OF THE CONSERVATION MEASURES THE MUNICIPAL PROVIDER
25 IS CURRENTLY IMPLEMENTING AND ANY ADDITIONAL CONSERVATION MEASURES THAT THE
26 PROVIDER INTENDS TO IMPLEMENT TO COMPLY WITH THE NON-PER CAPITA CONSERVATION
27 PROGRAM.

28 3. AN EXPLANATION OF HOW EACH CONSERVATION MEASURE DESCRIBED IN THE
29 PROVIDER PROFILE IS RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE
30 AREA CHARACTERISTICS OR WATER USE PATTERNS.

31 F. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S PROVIDER
32 PROFILE UNDER SUBSECTION E OF THIS SECTION, THE DIRECTOR SHALL APPROVE OR
33 DISAPPROVE THE PROVIDER PROFILE AND SEND WRITTEN NOTICE OF THE DECISION TO
34 THE MUNICIPAL PROVIDER. THE DIRECTOR SHALL APPROVE THE PROVIDER PROFILE IF
35 THE DIRECTOR DETERMINES THAT THE PROFILE CONTAINS INFORMATION DEMONSTRATING
36 THAT THE MUNICIPAL PROVIDER WILL IMPLEMENT AT LEAST THE MINIMUM NUMBER OF
37 CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM AND
38 THAT THE CONSERVATION MEASURES ARE REASONABLY RELEVANT TO THE MUNICIPAL
39 PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS OR WATER USE PATTERNS. IF
40 THE DIRECTOR DISAPPROVES THE PROVIDER PROFILE, THE DIRECTOR SHALL INCLUDE
41 WITH THE WRITTEN NOTICE OF THE DECISION THE REASONS FOR THE DISAPPROVAL. A
42 DECISION OF THE DIRECTOR DISAPPROVING A PROVIDER PROFILE IS AN APPEALABLE
43 AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. IF THE DIRECTOR
44 FAILS TO SEND THE MUNICIPAL PROVIDER WRITTEN NOTICE APPROVING OR DISAPPROVING

1 THE PROVIDER PROFILE WITHIN NINETY DAYS AFTER RECEIVING THE PROVIDER PROFILE,
2 THE PROVIDER PROFILE SHALL BE DEEMED APPROVED.

3 G. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER PROFILE
4 PURSUANT TO SUBSECTION F OF THIS SECTION, WITHIN NINETY DAYS AFTER THE DATE
5 OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER PROFILE, OR WITHIN
6 NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF THE MUNICIPAL PROVIDER
7 FILES A TIMELY NOTICE OF APPEAL OF THE DECISION PURSUANT TO TITLE 41, CHAPTER
8 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL REVISE THE PROVIDER PROFILE TO
9 CORRECT THE DEFICIENCIES IDENTIFIED BY THE DIRECTOR IN THE WRITTEN NOTICE AND
10 SUBMIT THE REVISED PROVIDER PROFILE TO THE DIRECTOR. WITHIN NINETY DAYS
11 AFTER RECEIVING A MUNICIPAL PROVIDER'S REVISED PROVIDER PROFILE PURSUANT TO
12 THIS SUBSECTION, THE DIRECTOR SHALL APPROVE OR DISAPPROVE THE REVISED
13 PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION. IF THE DIRECTOR
14 DISAPPROVES THE REVISED PROVIDER PROFILE:

15 1. THE DECISION IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41,
16 CHAPTER 6, ARTICLE 10.

17 2. THE MUNICIPAL PROVIDER IS IN VIOLATION OF THIS SECTION BEGINNING ON
18 THE DATE THE DIRECTOR'S DECISION IS FINAL UNTIL THE MUNICIPAL PROVIDER
19 SUBMITS A PROVIDER PROFILE THAT IS APPROVED BY THE DIRECTOR, EXCEPT THAT THE
20 PROVIDER SHALL NOT BE IN VIOLATION BEFORE THE COMPLIANCE DATE FOR THE NON-PER
21 CAPITA CONSERVATION PROGRAM SPECIFIED IN THE MANAGEMENT PLAN.

22 H. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, A
23 MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM
24 PURSUANT TO SECTION 45-567, SUBSECTION C OR SECTION 45-571.01, SUBSECTION B
25 SHALL BE REGULATED UNDER THE PROGRAM BEGINNING ON THE DATE THE DIRECTOR
26 APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F
27 OR G OF THIS SECTION, BUT NOT EARLIER THAN THE COMPLIANCE DATE SPECIFIED IN
28 THE MANAGEMENT PLAN. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
29 CONSERVATION PROGRAM SHALL COMPLY WITH THE PROGRAM BEGINNING ON THE DATE THE
30 PROVIDER IS FIRST REGULATED UNDER THE PROGRAM UNTIL THE COMPLIANCE DATE FOR
31 THE APPLICABLE CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN
32 FOR THE FIFTH MANAGEMENT PERIOD.

33 I. A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER SUPPLY
34 PURSUANT TO SECTION 45-576 SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA
35 CONSERVATION PROGRAM, BUT INSTEAD SHALL BE REGULATED UNDER THE PER CAPITA
36 CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR PURSUANT TO SECTION 45-567,
37 SUBSECTION A, PARAGRAPH 2, UNLESS BOTH OF THE FOLLOWING APPLY:

38 1. THE MUNICIPAL PROVIDER NOTIFIES THE DIRECTOR IN WRITING THAT IT
39 ELECTS TO BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM AND
40 INCLUDES WITH THE NOTICE A PROVIDER PROFILE THAT CONTAINS THE INFORMATION
41 PRESCRIBED BY SUBSECTION E OF THIS SECTION.

42 2. THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE
43 PURSUANT TO SUBSECTION F OF THIS SECTION OR A REVISED PROVIDER PROFILE
44 PURSUANT TO SUBSECTION G OF THIS SECTION. THE MUNICIPAL PROVIDER SHALL BE

1 REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM BEGINNING ON THE DATE
2 THE DIRECTOR APPROVES THE PROVIDER PROFILE OR A REVISED PROVIDER PROFILE.

3 J. A LARGE UNTREATED WATER PROVIDER SHALL NOT BE REGULATED UNDER THE
4 NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF
5 UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH ANY
6 CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED PURSUANT TO SECTION
7 45-567, SUBSECTION A, PARAGRAPH 3 WITH RESPECT TO ITS DELIVERIES OF UNTREATED
8 WATER.

9 K. A SMALL MUNICIPAL PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER
10 CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL COMPLY WITH ANY CONSERVATION
11 REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL PROVIDERS PURSUANT TO SECTION
12 45-567, SUBSECTION A, PARAGRAPH 2.

13 ~~G. L. A municipal provider that is approved for a~~ REGULATED UNDER THE
14 non-per capita conservation program established under this section shall
15 comply with any individual user requirements prescribed pursuant to section
16 45-567, subsection A, paragraph 2, except as provided in section 45-571.02.

17 ~~H. The director shall include in a non per capita conservation program~~
18 ~~established under this section:~~

19 ~~1. A requirement that a municipal provider that applied for the~~
20 ~~program under subsection D, paragraph 3 of this section shall not deliver~~
21 ~~mined groundwater for use within its service area after January 1, 2010. The~~
22 ~~director may excuse a municipal provider's failure to comply with the~~
23 ~~requirement during any year if the municipal provider demonstrates to the~~
24 ~~satisfaction of the director that the municipal provider's failure to comply~~
25 ~~with the requirement was due to drought conditions or the failure of a~~
26 ~~surface water distribution system.~~

27 ~~2. A requirement that a municipal provider that applied for the~~
28 ~~program under subsection D, paragraph 4 of this section shall not supply~~
29 ~~groundwater for use within its service area in an amount that exceeds the~~
30 ~~amount of groundwater the municipal provider may supply for use within its~~
31 ~~service area consistent with rules adopted by the director pursuant to~~
32 ~~section 45-576.~~

33 ~~I. M. Except as provided in subsection C of this section, a municipal~~
34 ~~provider that applies for a non per capita conservation program established~~
35 ~~under this section shall comply with the per capita conservation requirements~~
36 ~~prescribed pursuant to section 45-567, subsection A, paragraph 2 until the~~
37 ~~director approves the application. If the municipal provider's application~~
38 ~~for the non per capita conservation program is approved by the director, the~~
39 ~~provider~~ A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION
40 PROGRAM ESTABLISHED UNDER THIS SECTION is exempt from the per capita
41 conservation requirements prescribed under section 45-567, subsection A,
42 paragraph 2.

1 Sec. 5. Section 45-567.02, Arizona Revised Statutes, is amended to
2 read:

3 45-567.02. Alternative conservation programs for agriculture:
4 fourth management period

5 A. In addition to the provisions of the management plan for the fourth
6 management period prescribed by section 45-567, subsection A, paragraph 1,
7 the director shall include in the management plan the historic cropping
8 program prescribed by this section as an alternative agricultural
9 conservation program that achieves conservation equivalent to that required
10 by section 45-567, subsection A, paragraph 1.

11 B. The director shall establish the components of the historic
12 cropping program in the management plan for the fourth management period to
13 assure that conservation equivalent to that required by section 45-567,
14 subsection A, paragraph 1 will be achieved. In addition to the program
15 components established by the director, the historic cropping program shall
16 include the following provisions:

17 1. The director shall calculate the maximum annual groundwater
18 allotment as provided in section 45-465.

19 2. The director shall calculate the irrigation water duty in the same
20 manner as that required by section 45-567, subsection A, paragraph 1 using an
21 irrigation efficiency of seventy-five per cent. In areas deemed by the
22 director to have limiting soils, the director may use an irrigation
23 efficiency of seventy per cent for the water duty calculation.

24 3. The flexibility account provisions of section 45-467 apply except
25 as otherwise provided in this section.

26 4. The director shall not register credits to the flexibility account
27 established under section 45-467 that cause the credit balance to exceed
28 seventy-five per cent of the maximum annual groundwater allotment established
29 pursuant to this subsection.

30 5. Only owners of an irrigation grandfathered right may apply for
31 participation in the historic cropping program.

32 C. In the management plan, the director shall establish criteria that
33 the applicant shall satisfy to enter the historic cropping program to assure
34 that conservation equivalent to that required by section 45-567, subsection
35 A, paragraph 1 will be achieved. An owner of an irrigation grandfathered
36 right may apply to participate in the historic cropping program by filing an
37 application with the director. The director shall not approve an application
38 for the historic cropping program unless the applicant satisfies the entrance
39 criteria established by the director and the following conditions are
40 satisfied:

41 1. The applicant's accumulation of credits in the applicant's
42 flexibility account under section 45-467 is equal to or less than
43 seventy-five per cent of the farm's maximum annual groundwater allotment
44 established under section 45-567, subsection A, paragraph 1. To satisfy this
45 requirement, the applicant may either sell or convey any excess credits as

1 provided by section 45-467 or the applicant may relinquish any excess
2 credits.

3 2. The applicant's accumulation of debits in the applicant's
4 flexibility account under section 45-467 is equal to or less than twenty-five
5 per cent of the farm's maximum annual groundwater allotment established under
6 section 45-567, subsection A, paragraph 1.

7 D. In the management plan, the director shall establish performance
8 standards that the owner of an irrigation grandfathered right or any person
9 using groundwater pursuant to that right shall satisfy while participating in
10 the historic cropping program to assure that conservation equivalent to that
11 required by section 45-567, subsection A, paragraph 1 will be achieved. After
12 an owner of an irrigation grandfathered right has been approved for
13 participation in the historic cropping program, the owner of that right, and
14 any person using groundwater pursuant to that right, shall meet both of the
15 following conditions:

16 1. Comply with the performance standards established by the director.

17 2. Not accumulate debits to the flexibility account established under
18 section 45-467 that exceed twenty-five per cent of the maximum annual
19 groundwater allotment established under subsection B of this section. The
20 owner of the irrigation grandfathered right, and any person entitled to use
21 groundwater pursuant to that right, violate this section if the debit balance
22 exceeds the amount stated in this paragraph.

23 E. Notwithstanding the provisions of section 45-467, an owner of an
24 irrigation grandfathered right, while participating in the historic cropping
25 program, shall not convey or sell flexibility account credits from, or
26 purchase flexibility account credits for, the flexibility account regulated
27 by the historic cropping program.

28 F. The director may include in the adoption of, or a modification to,
29 the management plan for the fourth management period additional alternative
30 agricultural conservation programs that the director determines achieve
31 conservation that is at least equivalent to that required under section
32 45-567, subsection A, paragraph 1, including ~~one or both of the following:~~

33 ~~1-~~ a cropped acreage program in which the maximum annual groundwater
34 allotment is determined based on the crops grown during the calendar year in
35 which the irrigation efficiency is applied.

36 ~~2-~~ G. THE DIRECTOR SHALL INCLUDE IN THE ADOPTION OF THE MANAGEMENT
37 PLAN FOR THE FOURTH MANAGEMENT PERIOD a best management practices program
38 that requires the owner of an irrigation grandfathered right and any person
39 using groundwater pursuant to the right to implement specific agricultural
40 conservation practices for water use on the land or farm unit to which the
41 right is appurtenant in lieu of complying with an irrigation water duty and a
42 maximum annual groundwater allotment. THE PROGRAM SHALL BE DESIGNED TO
43 ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT REQUIRED UNDER
44 SECTION 45-567, SUBSECTION A, PARAGRAPH 1.

1 Sec. 6. Section 45-568, Arizona Revised Statutes, is amended to read:
2 45-568. Management plan for fifth management period; guidelines
3 A. For the fifth management period, 2020 to 2025, the director shall
4 promulgate a management plan for each initial active management area not
5 later than January 1, 2019 pursuant to the guidelines prescribed in section
6 45-567, subsections A and B, except that:
7 1. The director shall establish the historic annual net natural
8 recharge for any groundwater replenishment district in the active management
9 area, computed by determining the net natural recharge, as defined by section
10 48-4401, for the groundwater basin beneath the district during calendar years
11 1988 through 2017 and dividing the result by thirty.
12 2. The director may adjust the highest twenty-five per cent of the
13 irrigation water duties established within an area of similar farming
14 conditions pursuant to section 45-567 by reducing each water duty in an
15 amount up to five per cent, except that in making the adjustment, no water
16 duty may be reduced to an amount less than the greater of the following:
17 (a) The highest water duty within the lowest seventy-five per cent of
18 the water duties computed within the area of similar farming conditions for
19 the fifth management period.
20 (b) A water duty computed for the farm unit under this paragraph using
21 an irrigation efficiency of eighty per cent.
22 3. A person who is entitled to use groundwater pursuant to an
23 irrigation grandfathered right may apply to the director at any time during
24 the management period for an exemption from the irrigation water duties
25 established pursuant to this section. The director shall grant the exemption
26 if the person demonstrates to the director's satisfaction that granting the
27 exemption is consistent with achieving the management goal of the active
28 management area and that one of the following applies:
29 (a) Withdrawal of groundwater pursuant to the irrigation grandfathered
30 right during the management period will intercept groundwater that would
31 otherwise flow out of and be lost to the active management area in the next
32 fifteen years without entering another active management area.
33 (b) Withdrawal of groundwater pursuant to the irrigation grandfathered
34 right during the management period will prevent encroachment of a rising
35 depth to groundwater level that will cause waterlogging problems within the
36 next fifteen years.
37 B. Within thirty days after the management plan for the fifth
38 management period is adopted, the director shall give written notice in the
39 manner and to the persons prescribed in section 45-565, subsection B AND
40 SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM
41 ESTABLISHED PURSUANT TO SECTION 45-568.01 TO ALL MUNICIPAL PROVIDERS. Two
42 years before the compliance date specified in the management plan for any
43 irrigation water duty, intermediate water duty, conservation requirement or
44 intermediate conservation requirement, the director shall give additional

1 written notice by first class mail to the last known addresses of the persons
2 prescribed in section 45-565, subsection B AND THIS SUBSECTION.

3 C. Except for a person who is exempt from irrigation water duties
4 under section 45-563.02, subsection A, all persons notified pursuant to
5 subsection B of this section shall comply with the applicable irrigation
6 water duty or conservation requirements for the fifth management period not
7 later than January 1, 2025 and shall remain in compliance until the
8 legislature determines otherwise.

9 Sec. 7. Section 45-568.01, Arizona Revised Statutes, is amended to
10 read:

11 45-568.01. Non-per capita conservation program for municipal
12 providers; fifth management period

13 A. In addition to the provisions of the management plan for the fifth
14 management period prescribed by section 45-568, subsection A, the director
15 shall include in the management plan a non-per capita conservation program
16 for municipal providers ~~pursuant to the guidelines prescribed in section~~
17 ~~45-567.01~~. THE PROGRAM SHALL REQUIRE A MUNICIPAL PROVIDER REGULATED UNDER
18 THE PROGRAM TO IMPLEMENT ONE OR MORE WATER CONSERVATION MEASURES IN ITS
19 SERVICE AREA FROM THE LIST ADOPTED BY THE DIRECTOR PURSUANT TO SUBSECTION B
20 OF THIS SECTION, SUBJECT TO APPROVAL BY THE DIRECTOR PURSUANT TO SUBSECTION F
21 OR G OF THIS SECTION. THE PROGRAM MAY PRESCRIBE THE NUMBER OF CONSERVATION
22 MEASURES THAT A PROVIDER MUST IMPLEMENT UNDER THIS SUBSECTION BASED ON THE
23 NUMBER OF SERVICE CONNECTIONS IN THE PROVIDER'S SERVICE AREA.

24 B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION
25 PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL
26 PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE
27 REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION A OF THIS SECTION, WHICH MAY
28 INCLUDE THE CONSERVATION MEASURES DESCRIBED IN SECTION 45-567.01, SUBSECTION
29 A, PARAGRAPHS 1 AND 2.

30 C. IN ADDITION TO THE REQUIREMENTS PRESCRIBED IN SUBSECTION A OF THIS
31 SECTION, A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION
32 PROGRAM SHALL:

33 1. INCLUDE IN ITS ANNUAL REPORTS FILED PURSUANT TO SECTION 45-632 A
34 COPY OF THE PROVIDER'S CURRENT WATER RATE STRUCTURE UNLESS NO CHANGES HAVE
35 BEEN MADE TO THE RATE STRUCTURE SINCE IT WAS LAST SUBMITTED TO THE DIRECTOR.
36 A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM
37 IS ENCOURAGED TO ADOPT A WATER RATE STRUCTURE THAT PROMOTES EFFICIENT USE OF
38 WATER, SUBJECT TO APPROVAL BY THE CORPORATION COMMISSION IF THE PROVIDER IS A
39 PUBLIC SERVICE CORPORATION.

40 2. FOR AT LEAST FIVE YEARS AFTER A YEAR IN WHICH THE MUNICIPAL
41 PROVIDER IS REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, KEEP AND
42 MAINTAIN ACCURATE RECORDS VERIFYING THAT THE MUNICIPAL PROVIDER IMPLEMENTED
43 THE CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM
44 DURING THAT YEAR.

1 D. THE DIRECTOR SHALL DESIGN THE NON-PER CAPITA CONSERVATION PROGRAM
2 TO ACHIEVE WATER USE EFFICIENCY IN THE SERVICE AREAS OF MUNICIPAL PROVIDERS
3 REGULATED UNDER THE PROGRAM EQUIVALENT TO THE WATER USE EFFICIENCY ASSUMED BY
4 THE DIRECTOR IN ESTABLISHING THE PER CAPITA CONSERVATION REQUIREMENTS
5 PURSUANT TO SECTION 45-568, SUBSECTION A.

6 E. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, ON OR
7 BEFORE THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A MUNICIPAL PROVIDER
8 NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION
9 45-568, SUBSECTION B OR SECTION 45-571.01, SUBSECTION B SHALL SUBMIT TO THE
10 DIRECTOR, ON A FORM PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT
11 CONTAINS THE FOLLOWING INFORMATION:

12 1. A DESCRIPTION OF THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA
13 CHARACTERISTICS AND WATER USE PATTERNS.

14 2. A DESCRIPTION OF THE CONSERVATION MEASURES THE MUNICIPAL PROVIDER
15 IS CURRENTLY IMPLEMENTING AND ANY ADDITIONAL CONSERVATION MEASURES THAT THE
16 PROVIDER INTENDS TO IMPLEMENT TO COMPLY WITH THE NON-PER CAPITA CONSERVATION
17 PROGRAM.

18 3. AN EXPLANATION OF HOW EACH CONSERVATION MEASURE DESCRIBED IN THE
19 PROVIDER PROFILE IS RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE
20 AREA CHARACTERISTICS OR WATER USE PATTERNS.

21 F. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S PROVIDER
22 PROFILE UNDER SUBSECTION E OF THIS SECTION, THE DIRECTOR SHALL APPROVE OR
23 DISAPPROVE THE PROVIDER PROFILE AND SEND WRITTEN NOTICE OF THE DECISION TO
24 THE MUNICIPAL PROVIDER. THE DIRECTOR SHALL APPROVE THE PROVIDER PROFILE IF
25 THE DIRECTOR DETERMINES THAT THE PROFILE CONTAINS INFORMATION DEMONSTRATING
26 THAT THE MUNICIPAL PROVIDER WILL IMPLEMENT AT LEAST THE MINIMUM NUMBER OF
27 CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM AND
28 THAT THE CONSERVATION MEASURES ARE REASONABLY RELEVANT TO THE MUNICIPAL
29 PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS OR WATER USE PATTERNS. IF
30 THE DIRECTOR DISAPPROVES THE PROVIDER PROFILE, THE DIRECTOR SHALL INCLUDE
31 WITH THE WRITTEN NOTICE OF THE DECISION THE REASONS FOR THE DISAPPROVAL. A
32 DECISION OF THE DIRECTOR DISAPPROVING A PROVIDER PROFILE IS AN APPEALABLE
33 AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. IF THE DIRECTOR
34 FAILS TO SEND THE MUNICIPAL PROVIDER WRITTEN NOTICE APPROVING OR DISAPPROVING
35 THE PROVIDER PROFILE WITHIN NINETY DAYS AFTER RECEIVING THE PROVIDER PROFILE,
36 THE PROVIDER PROFILE SHALL BE DEEMED APPROVED.

37 G. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER PROFILE
38 PURSUANT TO SUBSECTION F OF THIS SECTION, WITHIN NINETY DAYS AFTER THE DATE
39 OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER PROFILE, OR WITHIN
40 NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF THE MUNICIPAL PROVIDER
41 FILES A TIMELY NOTICE OF APPEAL OF THE DECISION PURSUANT TO TITLE 41, CHAPTER
42 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL REVISE THE PROVIDER PROFILE TO
43 CORRECT THE DEFICIENCIES IDENTIFIED BY THE DIRECTOR IN THE WRITTEN NOTICE AND
44 SUBMIT THE REVISED PROVIDER PROFILE TO THE DIRECTOR. WITHIN NINETY DAYS
45 AFTER RECEIVING A MUNICIPAL PROVIDER'S REVISED PROVIDER PROFILE PURSUANT TO

1 THIS SUBSECTION, THE DIRECTOR SHALL APPROVE OR DISAPPROVE THE REVISED
2 PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION. IF THE DIRECTOR
3 DISAPPROVES THE REVISED PROVIDER PROFILE:

4 1. THE DECISION IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41,
5 CHAPTER 6, ARTICLE 10.

6 2. THE MUNICIPAL PROVIDER IS IN VIOLATION OF THIS SECTION BEGINNING ON
7 THE DATE THE DIRECTOR'S DECISION IS FINAL UNTIL THE MUNICIPAL PROVIDER
8 SUBMITS A PROVIDER PROFILE THAT IS APPROVED BY THE DIRECTOR, EXCEPT THAT THE
9 PROVIDER SHALL NOT BE IN VIOLATION BEFORE THE COMPLIANCE DATE FOR THE NON-PER
10 CAPITA CONSERVATION PROGRAM SPECIFIED IN THE MANAGEMENT PLAN.

11 H. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, A
12 MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM
13 PURSUANT TO SECTION 45-568, SUBSECTION B OR SECTION 45-571.01, SUBSECTION B
14 SHALL BE REGULATED UNDER THE PROGRAM BEGINNING ON THE DATE THE DIRECTOR
15 APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F
16 OR G OF THIS SECTION, BUT NOT EARLIER THAN THE COMPLIANCE DATE SPECIFIED IN
17 THE MANAGEMENT PLAN. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
18 CONSERVATION PROGRAM SHALL COMPLY WITH THE PROGRAM BEGINNING ON THE DATE THE
19 PROVIDER IS FIRST REGULATED UNDER THE PROGRAM.

20 I. A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER SUPPLY
21 PURSUANT TO SECTION 45-576 SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA
22 CONSERVATION PROGRAM, BUT INSTEAD SHALL BE REGULATED UNDER THE PER CAPITA
23 CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR PURSUANT TO SECTION 45-568,
24 SUBSECTION A, UNLESS BOTH OF THE FOLLOWING APPLY:

25 1. THE MUNICIPAL PROVIDER NOTIFIES THE DIRECTOR IN WRITING THAT IT
26 ELECTS TO BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM AND
27 INCLUDES WITH THE NOTICE A PROVIDER PROFILE THAT CONTAINS THE INFORMATION
28 PRESCRIBED BY SUBSECTION E OF THIS SECTION.

29 2. THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE
30 PURSUANT TO SUBSECTION F OF THIS SECTION OR A REVISED PROVIDER PROFILE
31 PURSUANT TO SUBSECTION G OF THIS SECTION. THE MUNICIPAL PROVIDER SHALL BE
32 REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM BEGINNING ON THE DATE
33 THE DIRECTOR APPROVES THE PROVIDER PROFILE OR A REVISED PROVIDER PROFILE.

34 J. A LARGE UNTREATED WATER PROVIDER SHALL NOT BE REGULATED UNDER THE
35 NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF
36 UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH ANY
37 CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED FOR DELIVERIES OF
38 UNTREATED WATER BY LARGE UNTREATED WATER PROVIDERS PURSUANT TO SECTION
39 45-568, SUBSECTION A WITH RESPECT TO ITS DELIVERIES OF UNTREATED WATER.

40 K. A SMALL MUNICIPAL PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER
41 CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL COMPLY WITH ANY CONSERVATION
42 REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL PROVIDERS PURSUANT TO SECTION
43 45-568, SUBSECTION A.

44 L. A MUNICIPAL PROVIDER THAT IS REGULATED UNDER THE NON-PER CAPITA
45 CONSERVATION PROGRAM ESTABLISHED UNDER THIS SECTION SHALL COMPLY WITH ANY

1 INDIVIDUAL USER REQUIREMENTS PRESCRIBED PURSUANT TO SECTION 45-568,
2 SUBSECTION A, EXCEPT AS PROVIDED IN SECTION 45-571.02.

3 M. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
4 CONSERVATION PROGRAM ESTABLISHED UNDER THIS SECTION IS EXEMPT FROM THE PER
5 CAPITA CONSERVATION REQUIREMENTS PRESCRIBED UNDER SECTION 45-568,
6 SUBSECTION A.

7 Sec. 8. Section 45-568.02, Arizona Revised Statutes, is amended to
8 read:

9 45-568.02. Alternative conservation programs for agriculture;
10 fifth management period

11 A. In addition to the provisions of the management plan for the fifth
12 management period prescribed by section 45-568, subsection A, the director
13 shall include in the management plan the historic cropping program prescribed
14 by this section as an alternative agricultural conservation program that
15 achieves conservation equivalent to that required by section 45-568,
16 subsection A.

17 B. The director shall establish the components of the historic
18 cropping program in the management plan for the fifth management period to
19 assure that conservation equivalent to that required by section 45-568,
20 subsection A will be achieved. In addition to the program components
21 established by the director, the historic cropping program shall include the
22 following provisions:

23 1. The director shall calculate the maximum annual groundwater
24 allotment as provided in section 45-465.

25 2. The director shall calculate the irrigation water duty in the same
26 manner as that required by section 45-568, subsection A using an irrigation
27 efficiency of seventy-five per cent. In areas deemed by the director to have
28 limiting soils, the director may use an irrigation efficiency of seventy per
29 cent for the water duty calculation.

30 3. The flexibility account provisions of section 45-467 apply except
31 as otherwise provided in this section.

32 4. The director shall not register credits to the flexibility account
33 established under section 45-467 that cause the credit balance to exceed
34 seventy-five per cent of the maximum annual groundwater allotment established
35 pursuant to this subsection.

36 5. Only owners of an irrigation grandfathered right may apply for
37 participation in the historic cropping program.

38 C. In the management plan, the director shall establish criteria that
39 the applicant shall satisfy to enter the historic cropping program to assure
40 that conservation equivalent to that required by section 45-568, subsection A
41 will be achieved. An owner of an irrigation grandfathered right may apply to
42 participate in the historic cropping program by filing an application with
43 the director. The director shall not approve an application for the historic
44 cropping program unless the applicant satisfies the entrance criteria
45 established by the director and the following conditions are satisfied:

1 1. The applicant's accumulation of credits in the applicant's
2 flexibility account under section 45-467 is equal to or less than
3 seventy-five per cent of the farm's maximum annual groundwater allotment
4 established under section 45-568, subsection A. To satisfy this requirement,
5 the applicant may either sell or convey any excess credits as provided by
6 section 45-467, or the applicant may relinquish any excess credits.

7 2. The applicant's accumulation of debits in the applicant's
8 flexibility account under section 45-467 is equal to or less than twenty-five
9 per cent of the farm's maximum annual groundwater allotment established under
10 section 45-568, subsection A.

11 D. In the management plan, the director shall establish performance
12 standards that the owner of an irrigation grandfathered right or any person
13 using groundwater pursuant to that right shall satisfy while participating in
14 the historic cropping program to assure that conservation equivalent to that
15 required by section 45-568, subsection A will be achieved. After an owner of
16 an irrigation grandfathered right has been approved for participation in the
17 historic cropping program, the owner of that right, and any person using
18 groundwater pursuant to that right, shall meet both of the following
19 conditions:

20 1. Comply with the performance standards established by the director.

21 2. Not accumulate debits to the flexibility account established under
22 section 45-467 that exceed twenty-five per cent of the maximum annual
23 groundwater allotment established under subsection B of this section. The
24 owner of the irrigation grandfathered right, and any person entitled to use
25 groundwater pursuant to that right, violate this section if the debit balance
26 exceeds the amount stated in this paragraph.

27 E. Notwithstanding the provisions of section 45-467, an owner of an
28 irrigation grandfathered right, while participating in the historic cropping
29 program, shall not convey or sell flexibility account credits from, or
30 purchase flexibility account credits for, the flexibility account regulated
31 by the historic cropping program.

32 F. The director may include in the adoption of, or a modification to,
33 the management plan for the fifth management period additional alternative
34 agricultural conservation programs that the director determines achieve
35 conservation that is at least equivalent to that required under section
36 45-568, subsection A, including ~~one or both of the following:~~

37 ~~1-~~ a cropped acreage program in which the maximum annual groundwater
38 allotment is determined based on the crops grown during the calendar year in
39 which the irrigation efficiency is applied.

40 ~~2-~~ G. THE DIRECTOR SHALL INCLUDE IN THE ADOPTION OF THE MANAGEMENT
41 PLAN FOR THE FIFTH MANAGEMENT PERIOD a best management practices program that
42 requires the owner of an irrigation grandfathered right and any person using
43 groundwater pursuant to the right to implement specific agricultural
44 conservation practices for water use on the land or farm unit to which the
45 right is appurtenant in lieu of complying with an irrigation water duty and a

1 maximum annual groundwater allotment. THE PROGRAM SHALL BE DESIGNED TO
2 ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT REQUIRED UNDER
3 SECTION 45-568, SUBSECTION A.

4 Sec. 9. Section 45-574, Arizona Revised Statutes, is amended to read:
5 45-574. Variances; application; notice; hearing; issuance

6 A. A person who requires additional time to comply with an irrigation
7 water duty or conservation requirement established pursuant to section
8 45-565, 45-566, 45-566.01, 45-567, 45-567.01, ~~or~~ 45-568 OR 45-568.01 may
9 apply to the director for a variance from the water duty or requirement
10 within ninety days from the date of notice of the water duty or requirement.
11 The application shall include the following:

- 12 1. The name and mailing address of the applicant.
- 13 2. The name of the active management area in which the use is located.
- 14 3. The amount of groundwater currently being withdrawn annually by the
15 person.
- 16 4. The irrigation water duty or conservation requirement from which
17 the variance is sought.
- 18 5. A general description of the economic circumstances preventing
19 timely compliance with the irrigation water duty or conservation requirement
20 and any information relevant to such circumstances.
- 21 6. The sworn statement that the information contained in the
22 application is true and correct to the best belief and knowledge of the
23 applicant.

24 7. Such other information as the director may require.

25 B. The director shall give written notice to the applicant of the
26 opportunity for an administrative hearing. An administrative hearing shall
27 be held before the director's decision on the application if the director
28 deems a hearing necessary or a hearing is requested by the applicant.

29 C. The director may grant a variance upon a showing of compelling
30 economic circumstances. The variance shall specify:

31 1. The amount of groundwater which may be withdrawn by the person
32 during the variance period, or a schedule of intermediate water duties or
33 conservation requirements to be reached at specified intervals during the
34 variance period.

35 2. The duration of the variance, which may not exceed five years from
36 the date of the director's final determination of the variance.

37 D. A party aggrieved by the director's decision may seek judicial
38 review of the final decision of the director as provided in section 45-114,
39 subsection B in the superior court in the county in which the irrigated land
40 or non-irrigation use is located.

41 E. Section 45-114, subsections A and B govern administrative
42 proceedings, rehearing or review and judicial review of final decisions of
43 the director under this section. If an administrative hearing is held, it
44 shall be conducted in the active management area in which the use is located.

1 Sec. 10. Section 45-575, Arizona Revised Statutes, is amended to read:
2 45-575. Administrative review of irrigation water duty and
3 conservation requirements

4 A. Any aggrieved party may request an administrative review of an
5 irrigation water duty or conservation requirement established pursuant to
6 section 45-565, 45-566, 45-566.01, 45-567, 45-567.01, ~~or~~ 45-568 OR 45-568.01.
7 Except as provided in subsection B of this section, the request must be made
8 not later than ninety days from the date of notice of such duty or
9 requirement given thirty days after the adoption of the management plan or if
10 the notice was given pursuant to section 45-566.01, SUBSECTION E OR
11 45-571.02, subsection B, not later than ninety days from the date of the
12 notice.

13 B. An aggrieved person who claims that extraordinary circumstances not
14 in existence as of the date of notice that was given thirty days after
15 adoption of the management plan justify modification of an irrigation water
16 duty or conservation requirement established pursuant to section 45-565,
17 45-566, 45-566.01, 45-567, 45-567.01, ~~or~~ 45-568 OR 45-568.01 may request
18 administrative review of the water duty or conservation requirement more than
19 ninety days from the date of notice of the water duty or conservation
20 requirement. The director may modify the water duty or conservation
21 requirement if the aggrieved person demonstrates to the director by clear and
22 convincing evidence that extraordinary circumstances not in existence as of
23 the date of the notice that was given thirty days after adoption of the
24 management plan make it unreasonable to require compliance with a water duty
25 or conservation requirement.

26 ~~C. An aggrieved municipal provider that is subject to a non per capita~~
27 ~~conservation program established pursuant to section 45-565.01, 45-566.01,~~
28 ~~45-567.01 or 45-568.01 may request an administrative review of a conservation~~
29 ~~requirement, other than a conservation requirement for individual users, only~~
30 ~~if the municipal provider claims at any time that significant circumstances~~
31 ~~that did not exist when the municipal provider's application for the non per~~
32 ~~capita conservation program was approved by the director justify modification~~
33 ~~of the conservation requirement. The director may modify the conservation~~
34 ~~requirement if the aggrieved municipal provider demonstrates to the director~~
35 ~~by clear and convincing evidence that significant circumstances that did not~~
36 ~~exist when the application was approved by the director make it unreasonable~~
37 ~~to require compliance with the conservation requirement. Significant~~
38 ~~circumstances include the aggrieved municipal provider's agreement to~~
39 ~~substitute new conservation programs for the conservation programs that the~~
40 ~~municipal provider is currently required to implement under the non per~~
41 ~~capita conservation program if the new conservation programs are expected to~~
42 ~~result in an equivalent or greater water use efficiency within the municipal~~
43 ~~provider's service area as the conservation programs that the municipal~~
44 ~~provider is currently required to implement.~~

1 ~~D.~~ C. The director shall give written notice to the aggrieved party
2 who is requesting an administrative review of the opportunity for an
3 administrative hearing. An administrative hearing shall be held before the
4 director's decision on the application if the director deems a hearing
5 necessary or a hearing is requested by the applicant.

6 ~~E.~~ D. A party aggrieved by the director's decision may seek judicial
7 review of the final decision of the director as provided in section 45-114,
8 subsection B in the superior court in the county in which the irrigated land
9 or the non-irrigation use is located.

10 ~~F.~~ E. Section 45-114, subsections A and B govern administrative
11 proceedings, rehearing or review and judicial review of final decisions of
12 the director under this section. If an administrative hearing is held, it
13 shall be conducted in the active management area in which the use is located.

14 Sec. 11. Review of non-per capita conservation programs;
15 advisory committee; modifications; notice

16 The director of water resources shall periodically review a non-per
17 capita conservation program adopted pursuant to section 45-566.01, 45-567.01
18 or 45-568.01, Arizona Revised Statutes, to evaluate the effectiveness of the
19 program, including the list of conservation measures adopted by the director
20 pursuant to section 45-566.01, subsection B, 45-567.01, subsection B or
21 45-568.01, subsection B, Arizona Revised Statutes. The director may
22 establish an advisory committee to assist the director in the evaluation.
23 The director may also contract with an independent researcher to assist the
24 director in the evaluation. If the director determines that changes to the
25 program are appropriate to improve the effectiveness of the program:

26 1. The director shall modify the program pursuant to section 45-572,
27 Arizona Revised Statutes, if the changes are consistent with section
28 45-566.01, 45-567.01 or 45-568.01, Arizona Revised Statutes, whichever
29 applies.

30 2. The director shall give written notice of the appropriate changes
31 to the speaker of the house of representatives, the president of the senate
32 and the governor if the changes are not consistent with section 45-566.01,
33 45-567.01 or 45-568.01, Arizona Revised Statutes, whichever applies.

34 Sec. 12. Review of agricultural best management practices
35 programs; modifications

36 The director of water resources shall periodically review an
37 agricultural best management practices conservation program adopted pursuant
38 to section 45-567.02, subsection G or section 45-568.02, subsection G,
39 Arizona Revised Statutes, to evaluate the effectiveness of the program,
40 including the list of best management practices included in the program. If
41 the director determines that changes to the program are appropriate to
42 improve the effectiveness of the program:

1 1. The director shall modify the program pursuant to section 45-572,
2 Arizona Revised Statutes, if the changes are consistent with section
3 45-567.02, subsection G or section 45-568.02, subsection G, Arizona Revised
4 Statutes, whichever applies.

5 2. The director shall give written notice of the appropriate changes
6 to the speaker of the house of representatives, the president of the senate
7 and the governor if the changes are not consistent with section 45-567.02,
8 subsection G or section 45-568.02, subsection G, Arizona Revised Statutes,
9 whichever applies.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.